

DEPARTMENT OF STATE REVENUE

28950270.LOF

LETTER OF FINDINGS NUMBER 95-0270

Controlled Substance Excise Tax

For The Period: 02/13/95

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5, Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

The taxpayer was arrested February 13, 1995 after postal officers intercepted a package containing marijuana that was to be delivered to the taxpayer's address. A controlled delivery of the package precipitated a search that resulted in a seizure of marijuana and lysergic acid diethylamide. The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of 2,273.40 grams of marijuana. The taxpayer was not assessed for the 68 dosage units (.10 grams) of blotter lysergic acid diethylamide. The taxpayer was assessed by the Department on February 15, 1995. The taxpayer entered a guilty plea on July 28, 1995. The taxpayer in exchange for his plea received six (6) years in prison. The taxpayer served one (1) year which counted as two (2) and is on probation for the remaining four (4) years.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

During the hearing, the taxpayer stated that he confessed and pleaded guilty to dealing in marijuana a Class D Felony. The taxpayer stated that he has already been sentenced to the Department of Corrections for six (6) years and has served two (2) years with four (4) years of probation. The taxpayer asserts that it is double jeopardy to have to serve time for the crime and be assessed tax on the marijuana he possessed. The Indiana Supreme Court addressed this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court held that since the Department's assessment was first in time, it does not constitute the double jeopardy. In this case, the Department's assessment came before the taxpayer's plea bargain. The Department's assessment occurred on 02/15/95 and the disposition of the taxpayer's criminal case was 07/28/95.

FINDING

The taxpayer's protest is denied.

II. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

FINDING

The taxpayer's protest of the Department's imposition of a one hundred percent (100%) penalty is denied.